

United States Senate

WASHINGTON, DC 20510

May 16, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

We write with concerns over your decision to appoint Elizabeth “Tate” Bennett as Deputy Associate Administrator for Intergovernmental Relations in the Environmental Protection Agency (EPA) Office of Congressional and Intergovernmental Relations (OCIR). It is not apparent how Ms. Bennett can serve in this position consistent with the requirements of Executive Order 13770, “Ethics Commitments by Executive Branch Employees.”

Executive Order 13770 requires “[e]very appointee in every executive agency appointed on or after January 20, 2017” to sign and be “contractually committed to” an “Ethics Pledge.”¹ The Ethics Pledge prevents appointees from “participat[ing] in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients” for the first two years after their appointment.² Appointees who were registered lobbyists during the two years before the date of their appointment are prohibited from “participat[ing] in any particular matter on which [they] lobbied within the 2 years before the date of [their] appointment or participate in the specific issue area in which that particular matter falls.”³

According to the Office of Government Ethics (OGE), “specific issue area” as used in the E.O. 13770 is a “particular matter of general applicability” which requires an appointee to be recused from all aspects of a matter on which he or she previously lobbied.⁴ For example:

An appointee was a registered lobbyist during the two-year period before she entered government. In that capacity, she lobbied her agency against a proposed regulation focused on a specific industry. Her lobbying was limited to a specific section of the regulation affecting her client. Her recusal obligation as an appointee is not limited to the section of the regulation on which she lobbied, nor is it limited to the application of the regulation to her former client. Instead, she must recuse for two years from development and implementation of the entire regulation, subsequent interpretation of the regulation, and application of the regulation in individual cases.⁵

¹ Executive Order 13,770: Ethics Commitments by Executive Branch Appointees, January 28, 2017.

² *Id.*

³ *Id.*

⁴ Office of Government Ethics, Legal Advisory 17-03, March 20, 2017.

⁵ *Id.* at 2.

You have appointed Ms. Bennett as Deputy Associate Administrator for Intergovernmental Relations in EPA's OCIR. According to EPA's website, OCIR "serves as EPA's principal point of contact with Congress, states and local governments."⁶ OCIR personnel are often the public face of EPA, and are expected to be able to communicate about a range of EPA issues to Congress and state and local governments. According to EPA's website, staff at OCIR:

- Assists, develops and implements the legislative agenda for the agency, including legislative initiatives and proposals;
- Leads EPA in the review of legislation; coordinates EPA's formal positions and technical assistance to Congress; and monitors all relevant legislative actions (e.g., bills, reports, regulations) related to EPA programs;
- Facilitates communication of the agency's priorities and policies to Congress;
- Coordinates agency appearances at Congressional hearings and manages associated testimony;
- Leads the development and implementation of the National Environmental Performance Partnership System between EPA and the states;
- Manages and monitors environmental issues with both national associations and individual state and local governments;
- Manages the agency's congressional and gubernatorial correspondence process;
- Monitors resources and coordinates policy for the agency's Regional science and technology (RS&T) organizations;
- Coordinates and maintains the Lead Region Process, which enhances Regional participation in agency decision-making; and
- Coordinates logistics, agendas, and subject matter for routine, special, and "hot issue" meetings and conference calls of EPA and Regional senior leaders.⁷

Prior to being appointed, Ms. Bennett was Senior Principal for Government Affairs at the National Rural Electric Cooperative Association (NRECA) where she was a registered lobbyist for the past eight quarters, including the first quarter of 2017. NRECA has a long track record of opposing EPA's health and environmental protections including those Ms. Bennett covered as a lobbyist. NRECA has been involved in at least seven EPA cases and commented on dozens of rules since 2007 (*see* Appendix A). During the eight quarters that Ms. Bennett worked for NRECA, it spent over \$5.3 million on lobbying activities. Ms. Bennett specifically lobbied on a broad set of EPA matters, including EPA's Clean Power Plan and New Source Performance Standard, Clean Water Rule, ozone standard, EPA enforcement, pesticides bills, budget resolutions, and appropriations bills (*see* Appendix B).

We do not see how Ms. Bennett can perform her job consistent with the limitations of the Ethics Pledge. Because of her activities as a registered federal lobbyist, she cannot work on legislation, communicate with Congress, or coordinate and monitor regional, state and local responses to a wide-range of major issues faced by EPA. Even if EPA were to determine some small subset of issues from which Ms. Bennett's prior lobbying does not disqualify her, installing someone who

⁶ <https://www.epa.gov/aboutepa/about-office-congressional-and-intergovernmental-relations-ocir> (accessed May 2, 2017).

⁷ *Id.*

has lobbied for an organization that has attacked EPA's efforts under both Republican and Democratic administrations as a public liaison for EPA suggests you have little regard for EPA's standing and reputation before Congress or the communities in which it works to protect public health.

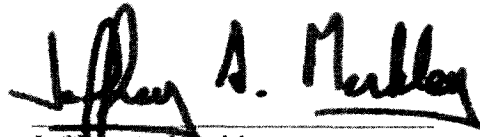
Considering NRECA and Ms. Bennett's engagement with EPA has been so extensive, we respectfully request the following information about Ms. Bennett by Friday, June 2:

- Ms. Bennett's Executive Branch Personnel Public Financial Disclosure Report, other OGE Form 201 Covered Records, and any supplemental material.
- Lists of all issues Ms. Bennett has worked on, is permitted to work on, and is prohibited from working on.
- Any ethics agreements, recusals, waivers, or other documentation pertaining to which issues Ms. Bennett can and cannot work on.
- Ms. Bennett's counseling notes, emails, and any other communication between Ms. Bennett and EPA's Ethics Office and OGE.
- Names and title of all employees Ms. Bennett supervises and a list of the issues they work on.
- A copy of Ms. Bennet's signed "Ethics Pledge."

Sincerely,



Sheldon Whitehouse
United States Senator



Jeffrey A. Merkley
United States Senator

Appendix A

EPA cases in which NRECA has been involved since 2007

1. *Environmental Defense v. Duke Energy Corp* (2007): filed an amicus brief arguing that new source review (NSR) permitting is not required for repairs that do not increase a facility's achievable hourly emissions rate and the EPA's interpretation of "modification" in its regulations governing the new source performance standards (NSPS) that did not define "modification" based on hourly or annual emissions rates was consistent with the Clean Air Act.
2. *National Resources Defense Council v. EPA* (D.C. Cir. 2007): filed an amicus brief in favor of the EPA's regulation applying a narrow definition of "solid waste incineration unit."
3. *Arizona v. EPA* (9th Cir. 2013): filed an amicus brief arguing that the EPA's disapproval of Arizona's regional SIP undermines the purpose of the Rural Electrification Act and the EPA violated the language and Congressional intent of the Clean Air Act by requiring two units in Arizona to adhere to BART (best available retrofit technology) guidelines.
4. *EPA v. EME Homer City Generation* (2014): filed an amicus brief arguing that the EPA's transport rule violated the agency's statutory authority.
5. *Delaware Department of Natural Resources v. EPA* (D.C. Cir. 2014): filed an amicus brief in support of plaintiff challenging an EPA rule setting national emissions standards for hazardous air pollutants for reciprocating internal combustion engines.
6. *American Petroleum Institute v. EPA* (D.C. Cir. 2015): filed an amicus brief in support of plaintiff challenging an EPA regulation deregulating many hazardous secondary materials under the Resource Conservation and Recovery Act (RCRA) on the grounds that the EPA erred by not deregulating a category of secondary material called spent refinery catalysts generated by petroleum refining.
7. *North Dakota v. EPA* (D.C. Cir. 2016): filed an amicus brief in support of a plaintiff challenging the EPA's 111(b) carbon pollution standards for new and modified sources.

EPA Rules on which NRECA has commented since 2007

1. 2007: NRECA opposed Oil Pollution Prevention; Non-Transportation Related Onshore Facilities
2. 2007: NRECA opposed Prevention of Significant Deterioration and Non-attainment New Source Review: Emission Increases for Electric Generating Units
3. 2007: NRECA opposed Disposal of Coal Combustion Wastes in Landfills and Surface Impoundments
4. 2008: NRECA opposed Proposed Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide Geologic Segregation (GS) Wells
5. 2008: NRECA opposed Regulating Greenhouse Gas Emissions Under the Clean Air Act
6. 2009: NRECA opposed Efficient Limitations Guidelines and Standards for the Construction and Development Point Source Category
7. 2009: NRECA opposed Oil Pollution Prevention: Non-Transportation Related Onshore Facilities; Spill Prevention, Control, and Countermeasure Rule-Final Amendments
8. 2009: NRECA opposed Mandatory Reporting of Greenhouse Gases

9. 2009: NRECA opposed Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act
10. 2009: NRECA opposed Waste Energy Recovery Registry
11. 2009: NRECA opposed Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards
12. 2009: NRECA opposed Prevention of Significant Deterioration (PSD)
13. 2009: NRECA opposed Title V Greenhouse Gas Tailoring Rule
14. 2010: NRECA opposed Identification of Additional Classes of Facilities for Development of Financial Responsibility Requirements under CERCLA Section 108(b)
15. 2010: NRECA opposed Primary National Ambient Air Quality Standard for Sulfur Dioxide
16. 2010: NRECA opposed National Ambient Air Quality Standards for Ozone
17. 2010: NRECA opposed Steam Electric Power Generating Efficient Guidelines
18. 2010: NRECA opposed Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs
19. 2010: NRECA opposed Polychlorinated Biphenyls (PCBs) Reassignment of Use Authorizations
20. 2010: NRECA opposed Draft National Pollutant Discharge Elimination System Pesticide General Permit Point Source Discharges from the Application of Pesticides
21. 2010: NRECA opposed Identification of Non-Hazardous Secondary Materials that are Solid Waste
22. 2010: NRECA opposed National Emissions Standards for Hazardous Air Pollutants for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers
23. 2010: NRECA opposed Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines
24. 2010: NRECA opposed Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities
25. 2010: NRECA opposed Federal Implementation Plans to Reduce Interstate Transport of Fine Particular Matter and Ozone
26. 2011: NRECA opposed National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines
27. 2011: NRECA opposed Deferral for CO₂ Emissions from Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs
28. 2011: NRECA opposed Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities
29. 2011: NRECA opposed EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act
30. 2012: NRECA opposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units
31. 2012: NRECA opposed National Pollutant Discharge Elimination System-Proposed Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities
32. 2012: NRECA opposed Standards of Performance for Stationary Gas Turbines

33. 2013: NRECA opposed Reconsideration of Certain Startup Shutdown Issues: National Emissions Standards for Hazardous Air Pollutants from Coal and Oil Fired Electric Utility Steam Generating Unit
34. 2013: NRECA opposed Steam Electric Power Generating Point Source Category: Effluent Limitations Guidelines and Standards
35. 2014: NRECA supported Designation of Coal Ash as Non-Hazardous Waste
36. 2014: NRECA opposed Redefinition of Waters of the United States (WOTUS)
37. 2014: NRECA opposed New Carbon Dioxide Limits on Power Plants
38. 2014: NRECA opposed Guidelines for Wastewater Discharges from Coal Generation
39. 2015: NRECA opposed Carbon Pollution Emissions Guidelines: Existing Stationary Sources in Indian Country and U.S. Territories: Multi-Jurisdictional Partnerships
40. 2015: NRECA opposed Federal Plan Requirements: Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or before January 8, 2014
41. 2015: NRECA opposed Additional Ozone Standards
42. 2016: NRECA opposed Protection of Visibility: Amendments to Requirements to State Plans
43. 2016: NRECA opposed Clean Energy Incentive Program
44. 2016: NRECA opposed Effluent Limitations Guidelines and Standards for Electric Generation
45. 2017: NRECA opposed TSCA Reporting and Record Keeping Requirements: Standards for Small Manufacturers and Processors

Appendix B

EPA matters on which Ms. Bennett has lobbied

Q1 2017

1. Issues related to the federal budget and funding levels for agencies and programs.
2. Issues associated with the Administration's rulemaking of the Waters of the U.S. regulatory proposal.
3. Issues related to electric sector security including reliability, supply chain, public/private and cross sector partnerships, roles, responsibilities, information sharing, education, engagement, assessments, threats, gaps and security postures.
4. H.R. 806: the Ozone Standards Implementation Act of 2017 – the bill would impact air quality standards for ozone. For instance, the bill would stretch the Clean Air Act's mandatory timetable for revisiting air quality standards for ozone and other criteria pollutants from once every 5 years to once every 10 years.

Q4 2016

1. Issues related to the potential impact of the Administration's rulemaking on the Clean Power Plan on the Rural Utilities Service loan portfolio.
2. Issues pertaining to limited language on any changes to the definition of waters under federal control, which includes the Waters of the U.S. rule.
3. Issues related to the EPA's final coal combustion residuals regulation.
4. Issues related to the Administration's rulemaking on the "Clean Power Plan" and its potential impact on the RUS loan portfolio.
5. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
6. Issues related to Clean Air Act enforcement relating to GHG regulations and new source performance standards for power plants.
7. Issues associated with the Administrations rulemaking on the Waters of the U.S. regulatory proposal.
8. Issues related to Clean Water Act Enforcement.
9. S. 612: Water Infrastructure Improvements for the Nation Act (WIIN)
10. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
11. S. 1645: Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016.
12. Funding restrictions for EPA for enforcing its carbon pollution proposal under 111 (d) of the Clean Air Act on states that have failed to submit a state plan under the Clean Power Plan (Sec. 417); EPAs Waters of the U.S. Proposal (Section 421).
13. H.R. 5303, S. 2848, S. 612: Water Resource Development Act; Water Infrastructure Improvements for the Nation Act (WIIN Act).

Q3 2016

1. Issues related to the potential impact of the Administration's rulemaking on the Clean Power Plan on the Rural Utilities Service loan portfolio.
2. Energy and Water Development and Related Agencies Appropriations Act.

3. Issues pertaining to limitation language on any changes to the definition of waters under federal control, which includes the Waters of the U.S. rule.
4. Issues related to the potential impact of the Administration's rulemaking on the Clean Power Plan on the Rural Utilities Services loan portfolio.
5. Issues related to the EPA's final coal combustion residuals regulation.
6. Issues related to the Administration's rulemaking on the "Clean Power Plan" and its potential impact on the RUS loan portfolio.
7. Issues related to the Administration's proposal to power the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
8. Issues related to S. 2446, the Improving Coal Combustion Residuals Act of 2016 & H.R. 1734, The Improving Coal Combustion Residuals Act of 2015.
9. Issues related to Clean Air Act enforcement relating to GHG regulations and new source performance standards for power plants.
10. Issues associated with the Administration's rulemaking on the Waters of the U.S. regulatory proposal.
11. Issues related to Clean Water Act enforcement.
12. S. 2446: The Improving Coal Combustion Residuals Regulation Act of 2015.
13. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.

Q2 2016

1. Issues related to the potential impact of the Administration's rulemaking on the Clean Power Plan on the Rural Utilities Services loan portfolio.
2. Issues related to the EPA's final coal combustion residuals regulation.
3. Issues related to the Administration's rulemaking on the Clean Power Plan and its potential impact on the RUS loan portfolio.
4. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
5. Issues related to S. 2446, the Improving Coal Combustion Residuals Act of 2016 & H.R. 1734, The Improving Coal Combustion Residuals Act of 2015.
6. Issues related to Clean Air Act enforcement relating to GHG regulations and new source performance standards for power plants.
7. Issues associated with the Administration's rulemaking on the Waters of the U.S. regulatory proposal.
8. Issues related to Clean Water Act enforcement.
9. S. 2446: The Improving Coal Combustion Residuals Regulation Act of 2015.
10. H.R. 2576: The TSCA Modernization Act of 2015.
11. S. 697: Frank R. Lautenberg Chemical Safety for the 21st Century Act.
12. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
13. H.R. 2822: Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016.
14. S.1645: Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016 – Lobbied funding restrictions for EPA for enforcing its carbon pollution proposal under 111 (d) of the Clean Air Act on states that have failed to submit a state

plan under the Clean Power Plan (Sec. 417); EPAs Waters of the U.S. Proposal (section 421).

Q1 2016

1. Issues related to the potential impact of the Administration's rulemaking on the Clean Power Plan on the Rural Utilities Services loan portfolio.
2. Issues related to the EPA's final coal combustion residuals regulation.
3. Issues related to the Administration's rulemaking on the Clean Power Plan and its potential impact on the RUS loan portfolio.
4. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
5. Issues related to S. 2446, the Improving Coal Combustion Residuals Act of 2016 & H.R. 1734, The Improving Coal Combustion Residuals Act of 2015.
6. Issues related to Clean Air Act enforcement relating to GHG regulations and new source performance standards for power plants.
7. Issues associated with the Administration's rulemaking on the Waters of the U.S. regulatory proposal.
8. Issues related to Clean Water Act enforcement.
9. S. 2446: The Improving Coal Combustion Residuals Regulation Act of 2015
10. H.R. 2576: The TSCA Modernization Act of 2015.
11. S. 697: Frank R. Lautenberg Chemical Safety for the 21st Century Act
12. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
13. S. 1645: Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016 – Lobbied funding restrictions for EPA for enforcing its carbon pollution proposal under 111 (d) of the Clean Air Act on states that have failed to submit a state plan under the Clean Power Plan (Sec. 417); EPAs Waters of the U.S. Proposal (section 421).

Q4 2015

1. Issues related to the potential impact of the Administration's rulemaking on the Clean Power Plan on the Rural Utilities Services loan portfolio.
2. The Inclusion of modified language for H.R. 1734, the Improving Coal Combustion Residuals Regulation Act of 2015.
3. Issues related to the EPA's final coal combustion residuals regulation.
4. Issues related to the Administration's rulemaking on the "Clean Power Plan".
5. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.
6. H.R. 1734, S. 1803: the Improving Coal Combustion Residuals Regulation Act of 2015 – Legislation to provide nonhazardous regulation of coal combustion residuals.
7. H.R. 2576: The TSCA Modernization Act of 2015 – Provision to permit continued use of existing electrical transformers.
8. S. 697: Frank R. Lautenberg Chemical Safety for the 21st Century Act – A bill to amend the Toxic Substance Control Act.
9. Issues related to the Administration's proposal to lower the National Ambient Air Quality Standards (NAAQS) for Ozone pursuant to the Clean Air Act.

10. S.1645: Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016 – Lobbied funding restrictions for EPA for enforcing its carbon pollution proposal under 111 (d) of the Clean Air Act on states that have failed to submit a state plan under the Clean Power Plan (Sec. 417); EPAs Waters of the U.S. Proposal (section 421).

Q3 2015

1. Issues related to the potential impact of the Administration's rulemaking on the Clean Power Plan on the Rural Utilities Services loan portfolio.
2. H.R. 1732: Regulatory Integrity Protection Act – To require EPA and Army Corps to withdraw the proposed Water of the US rule.
3. S. 1140: Federal Water Quality Protection Act – A bill to require the Army Corps and the EPA to propose a regulation revising the definition of the term Waters of the United States.
4. S. 1500: Sensible Environmental Protection Act of 2015 – Preventing duplicate regulation of pesticide applications.
5. Issues related to Clean Air Act enforcement relating to GHG regulations and new source performance standards for power plants.
6. Issues associated with the Administration's rulemaking on the Waters of the U.S. regulatory proposal.
7. Issues related to Clean Water Act enforcement.
8. H.R. 897: Reducing Regulatory Burdens Act of 2015 – Preventing duplicate regulation of pesticide application.
9. S.1645: Department of the Interior, Environment, and Related Agencies Appropriations Act, 2016 – Lobbied funding restrictions for EPA for enforcing its carbon pollution proposal under 111 (d) of the Clean Air Act on states that have failed to submit a state plan under the Clean Power Plan (Sec. 417); EPAs Waters of the U.S. Proposal (section 421).
10. Issues related to the Administrations rulemaking on Waters of the U.S. and its effects on small business.
11. Issues related to the Clean Air Act enforcement relating to the GHG regulations and their effects on small business.

Q2 2015

1. H.Con.Res.27, S.Con.Res.11: Establishing the budget for the United States Government for fiscal year 2016 and setting forth appropriate budgetary levels for fiscal years 2017 through 2025.
2. H.R. 897: Reducing Regulatory Burdens Act of 2015 – Preventing duplicative regulation of pesticide application.
3. S. 848: Resolving Environmental and Grid Reliability Conflicts Act – The bill would protect electric utilities from liability associated from the EPA penalties and third party lawsuits where the Department of Energy issues an emergency, must-run order and voluntary or mandatory compliance with the order results in Clear Air Act or other environmental law violations.